

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ROBERT E. WOLTKAMP,)
v.)
Plaintiff,)
MICHAEL J. ASTRUE,) No. 09-1013-CV-W-FJG
Commissioner, Social Security)
Administration)
Defendant.)

ORDER

This action is a proceeding for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. § 402, et seq. On June 22, 2004, plaintiff filed an application for disability insurance benefits. Plaintiff's application was denied initially. Plaintiff appealed the denial to an administrative law judge. On February 2, 2007, following a hearing, the ALJ found that plaintiff was not disabled. Plaintiff requested a review of that decision and on May 17, 2007, the Appeals Council denied plaintiff's request for review. Plaintiff sought judicial review and on May 5, 2008, this Court remanded the case. The Court specifically instructed the ALJ to consider the VA's determination that plaintiff had a 100% service connected disability and explain the weight if any, accorded to that determination and if rejected, the reasons for the rejection. The ALJ was also instructed to consider the evidence from plaintiff's treating physician. On August 4, 2008, the Appeals Council remanded the case back to the ALJ for further development and a new decision. On February 27, 2009, following a new hearing, a new ALJ determined that plaintiff was not under a disability as defined in the

Act. On October 19, 2009, the Appeals Council denied plaintiff's request for additional administrative review. Thus, the February 27, 2009 decision of the ALJ stands as the final decision of the Commissioner. The facts and arguments are presented in the parties' briefs and will not be repeated here.

The Eighth Circuit recently stated the standard for judicial review of an ALJ's denial of benefits:

Our role on review is to determine whether the Commissioner's findings are supported by substantial evidence on the record as a whole. Substantial evidence is less than a preponderance, but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion. In determining whether existing evidence is substantial, we consider evidence that detracts from the Commissioner's decision as well as evidence that supports it. As long as substantial evidence in the record supports the Commissioner's decision, we may not reverse it because substantial evidence exists in the record that would have supported a contrary outcome or because we would have decided the case differently.

Baker v. Barnhart, 457 F.3d 882, 892 (8th Cir. 2006), citing, McKinney v. Apfel, 228 F.3d 860, 863 (8th Cir.2000).

The Court has reviewed the parties' briefs, the decision of the ALJ, the transcript of the hearing and the medical and documentary evidence. After this review, the Court finds substantial evidence in the record to support the Commissioner's decision. Accordingly, it is hereby **ORDERED** that plaintiff's Motion to Reverse the ALJ is hereby **DENIED** (Doc. # 9) and the decision of the Commissioner is hereby **AFFIRMED**.

Date: 03/17/11
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge